



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 10, 1997

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR97-2713

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111861.

The City of Houston Fire Department (the "department") received a request for a complaint against the requestor. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 143.121(b) and 143.089(g) of the Local Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 143.089 of the Local Government Code provides for the maintenance of a fire fighter or police civil service file and what may be kept in that file:

(a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

(b) A letter, memorandum or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to substantiate the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

Section 143.089(d) states that if negative information is placed in the civil service file, the civil service director must notify the affected fire fighter, who has a right to file a written response to the negative information that was placed in the file. Section 143.089(e) provides a fire fighter a mandatory right of access to information in his or her civil service file.

Information that section 143.089(b) and (c) prohibit from being placed in the civil service file may be maintained in the fire department's internal file, as provided in section 143.089(g):

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

The court in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), addressed the availability of information that is contained in the department's internal file pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. You inform this office that the requested information is not maintained in the fire fighter's civil

service file, but rather is maintained in the section 143.089(g) internal file. We note that although section 143.089(e) contains a mandatory right of access for a fire fighter to obtain access to records in that fire fighter's civil service file, there is no special right of access for a fire fighter to review documents in an internal, section 143.089(g) file. Thus, the requested records are confidential and may not be disclosed.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/ glg

Ref.: ID# 111861

Enclosures: Submitted documents

cc: Mr. Kyle Raney
21410 Roberts Cemetery Road
Hockley, Texas 77447
(w/o enclosures)